paid to a *de facto* clerk who performed the duties of the position during the interval.

The case of *Higgins v. The Mayor*, 131 N. Y. 128, is directly in point, and following *Terhune v. The Mayor*, 80 N. Y. 185, holds that payment to another who actually did the work is a good defense to such an action by a municipal corporation. The general rule is to the contrary. *Dillon, Mun. Corps.*, sec. 235. The salary of a public office is incident to the title and wrongful payment to a *de facto* officer is no defense to an action by a *de jure* officer. *Dorsey v. Smith*, 28 Cal. 21. A municipal corporation wrongfully removing an officer is liable for his salary. *Shaw v. Macon*, 19 Ga. 468. The amount of salary received by a *de facto* officer is the measure of damages receivable by a *de jure* officer for deprivation from office. *United States v. Addison*, 6 Wall. 291.

TITLE TO ANIMAL SKINS—BURDEN OF PROOF—PRESUMPTION.—LINDEN V. MCCORMICK ET AL., 96 N. W. 785 (MINN.).—*Held*, that where the plaintiff purchased deer skins for commercial purposes, it is to be presumed the game was lawfully killed and the skins came lawfully into his possession.

No previous adjudication of the point involved has been found. It is probably the first time it has come before the court for determination. Sec. 33, chap. 22, Gen. Laws, Minn., declares that no person can acquire title to game except by proving the killing of it at the time, and in the manner authorized. This statute was declared constitutional in *State v. Rodman*, 58 Minn. 393. In the present case the court distinguished between the title to game and the title to the product thereof, *id est*, the skins. The burden of proving that the skins were not legally obtained is on the State. *James v. Wood*, 82 Me. 173. *Thomas v. Northern Pacific Express Co.*, 73 Minn. 185.

The modern tendency as set forth in this case is, that "a person in good faith may acquire a valid title to skins of wild animals although the same may have been killed contrary to law."

USE OF STREETS—ADDITIONAL SERVITUDE—TELEPHONES.—KIRBY V. CITIZENS' TEL. CO., 97 N .W. 3 (S. D.).—*Held*, that the construction and maintenance of a telephone system on the streets of a city in such a manner as not to cause unnecessary injury is not an additional servitude for which an abutting property owner is entitled to compensation.

The decision in the principal case is based upon the principle that telephones are a means of communication. The reasonable use of the streets of a city for the necessary equipment of a telephone system is not a new and additional burden for which the abutting property owner is entitled to compensation. *Anerach v. Tel. Co.*, 70 Ohio N. P. 633. Other courts hold that telephones were not in contemplation when highways were constructed. *Pacific Cable Co. v. Irvine*, 49 Fed. 113. The construction of a telephone line is an additional burden for which the abutting owner is entitled to compensation. *Eels v. Am. Tel. Co.*, 143 N. Y. 133; *Board of Trade v. Barnett*, 107 Ill. 507; *Willis v. Erie Telegraph & Tel. Co.*, 37 Minn. 347; *Stowerson v. Tel. Co.*, 68 Miss. 559.

WATERCOURSES—SUBTERRANEAN CHANNELS—PERCOLATING WATERS—ADJOINING OWNERS—WASTE—INJUNCTION.—BARCLAY V. ABRAHAM ET AL, 96 N.

W. 1080 (IOWA.)—*Held*, that a landowner who dug a well, thereby diverting percolating waters and cutting off the supply from neighboring wells may be enjoined from wasting for pure malice the full flow of water thus obtained.

This follows the common law rule. *Greenleaf v. Francis*, 17 Pick. 117; *Chatfield v. Wilson*, 28 Vt. 49; *Wheatley v. Baugh*, 25 Pa. 528; *Frasier v. Brown*, 12 Ohio St. 294. *Contra, Huber v. Merkel*, 94 N. W. (Wis.) 354, holding that one is not liable for wasting water drawn from percolations, and that malice is not a factor even though his acts may stop the flow of neighboring wells. This is an extreme interpretation of the doctrine that percolating waters are property. All other recent decisions tend to qualify the doctrine of earliest decisions to the extent that even in the absence of malicious intent, percolating waters may not be used for pure profit, if such an act diminishes the flow of neighboring wells, to the detriment of their owners. *Stillwater Water Co. v. Farmer*, 93 N. W. (Minn.) 907; *Forbell v. City of New York*, 164 N. Y. 522; *Smith v. City of Brooklyn*, 160 N. Y. 357. Reason in the use of the property seems to be a criterion of the decisions on this point. 12 *Yale Law Journal*, 253, 459.